

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25415
Docket Number MW-25423

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman Buck Jones for alleged "violation of Rules 2, 14 and 16" was without just and sufficient cause (System File 40-1313-825).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The record shows that Claimant had been in Carrier's service since August 1, 1977. At the time of the events involved in this dispute, Claimant was working as a Trackman at Tulsa, Oklahoma, with assigned hours 7:30 A.M. to 4:00 P.M., Monday through Friday. On June 18, 1982, Claimant was notified of a formal investigation to be held on June 29, 1982:

"Please arrange to report to Room 109, Holiday Inn, Chanute, Kansas, Tuesday, June 29, 1982, at 9:00 AM, with your representative and witness(es), if desired, for formal investigation to develop all facts and place your responsibility, if any, in connection with possible violation of Rules 2, 14 and 16 of General Rules for the Guidance of Employees, dated 1978, Form 2626 Std., concerning your alleged failure to give all facts regarding your alleged injury on duty on January 7, 1982, while employed as Trackman on the Tulsa Section, No. 36.

* * *

The investigation was postponed and conducted on July 1, 1982.

The Rules cited in the June 18, 1982, notice to Claimant read:

"2. Employees must be conversant with and obey the Company's rules and special instructions. If an employee is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation. A copy of Form 2626 Std. is furnished each employee to be retained by him for his guidance."

"14. Employees must obey instructions from the proper authority in matters pertaining to their respective branches of service. They must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations."

"16. Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit on their fellow employees or subject the company to criticism or loss of goodwill."

A Transcript of the investigation conducted on July 1, 1982, has been made a part of the record. Following the investigation, Claimant was notified on July 9, 1982, of his dismissal from the service of the Carrier. We have reviewed the Transcript of the investigation and find that it was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated. In the investigation, exception was taken by Claimant's representative to the notice of charge. We consider the notice sufficiently precise to inform the Claimant and his representative of the purpose of the investigation and to enable them to prepare a defense. The notice met the requirements of the Agreement.

In the investigation it was developed that the first time the Carrier learned of an alleged injury to Claimant was in April, 1982, at which time the Carrier's Regional Claims Manager received a telephone call from someone alleging to be the Claimant, who wanted to know when a chiropractor's bill would be paid, the caller stating that he had been injured on the job sometime in January, 1982. The bill from the chiropractor showed the first day of treatment to have been on January 7, 1982. The evidence shows that Claimant signed a statement in the latter part of May, 1982, in which he alleged an on-duty injury sometime between January 4 and 7, 1982, while unloading ties from a gondola car, working under Foreman T. Firebaugh and with a co-employee whom he knew as "Blackie". The records of the Carrier, as developed, showed that Claimant was off on January 6 and 7, 1982; that the assignment he worked on January 4, 5, 1982, did not involve the handling of ties. It was also developed at the investigation that the employee known as "Blackie" did not work with Claimant until January 18, 1982. The Foreman (Firebaugh) and "Blackie" denied any knowledge of any injury to Claimant at the alleged time of the occurrence, or that the Claimant made any report to the Foreman of an alleged injury.

There were conflicts between the testimony of Claimant and others during the investigation. However, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Carrier. It is also well settled that the Board may not properly reverse the decision of a Carrier simply because of conflicts in testimony.

The record also shows that in the handling of the dispute on the property, the Carrier called attention to the fact that in Claimant's approximately five years of service, he had been disciplined on three separate prior occasions.

On the entire record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. The claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

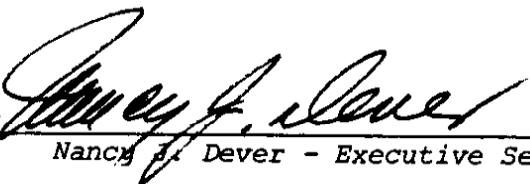
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.